IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE T. CH. SURYA RAO

W.P. No.13659 of 2004

Between:

M/s. Bang Agencies

H.No.15-2-673/8,

Kadia Building, Kishangunj,

Rep. by its Proprietor Mr. S. Sri Kishan,

S/o. Sri Vallabh, aged about 54 years,

HYDERABAD.

..... PETITIONER

AND

The Commercial Tax Officer

Hissamgunj Circle,

Secunderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction particularly in the nature of writ of Prohibition, prohibiting or commanding the C.T.O., Hissamgunj Circle, Secunderabad, the respondent herein, prohibiting from proceeding with the notices dated
09-07-2004 in Rf. No.INT/2003-2004 and in
Rc. No.B5/68/2004 in any manner of whatsoever nature for the alleged offence under Section – 138 of the Negotiable Instruments Act, 1881 read with Section - 420 of I.P.C. by way of prosecution in any Court of law by declaring or holding that the alleged collection of post-dated cheques bearing Nos.686998, dated 06-06-2004, 686999, dated 20-06-2004 and 687000 dated 27-05-2004 at the time of inspection by the CTO, Malakpet Circle, Hyderabad on 25-05-2004 and their subsequent presentation to the bank by the respondent herein as illegal, without authority of law, without jurisdiction and contrary to and in direct conflict with the law laid down by this Honourable Court in series of judgments namely 22 APSTJ 135, 26 APSTJ 91, 119 STC 52 and 33 APSTJ 249 in addition to violative (Sic. violation) of Article 227 of the Constitution of India.

Counsel for the Petitioners: MR. M.V.J.K. Kumar.

Counsel for the Respondent: Special S.C. for Commercial Tax

The Court at the stage of admission made the following :

THE HONOURABLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HONOURABLE SRI JUSTICE T.Ch. SURYA RAO

W.P. No.13659 of 2004

ORDER: (Per Hon'ble Sri Justice B. Sudershan Reddy)

The petitioner prays for a Writ in the nature of Writ of *Prohibition* prohibiting or commanding the respondent-Commercial Tax Officer, Hissamgunj Circle, Secunderabad, from proceeding with the notice, dated 09-07-2004, in any manner whatsoever nature for the alleged offence under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 of the Indian Penal Code by duly declaring that the collection of post-dated cheques and their subsequent presentation to the bank, as illegal and without any authority of law.

The petitioner claims to be a registered dealer in Dhal, Edible Oils, Jawari and Sunflower cake. It was assessed tax under the provisions of the A.P. General Sales Tax Act, 1957, (for short 'APGST Act') till assessment year 2002-2003. There was a surprise inspection by the respondent-Commercial Tax Officer, Malakpet Circle on 25-05-2004. The inspection itself is stated to have been undertaken on suspicion that the petitioner purchased and sold the cell phones but not paid the tax. During the course of inspection certain records were seized from the Manager of the petitioner's firm. The inspecting authority tentatively found that the petitioner has avoided a tax of Rs.12,92,063/- on an estimated turnover of Rs.3,23,01,586/- taxable at 4% and it was also observed that the same is an offence punishable under Section 30 of the APGST Act. That a notice under Sections 28, 30 & 32 of the APGST Act was issued providing opportunity to compound the offence. The Manager of the petitioner's firm made the following statement on that day:

> "You have visited our office located in the above address along with ACTO and staff for inspection on authorisation issued by DC(CT) by the SL.No.0002731, dt.24-05-2004. You have enquired about business activities of above firm. Proprietor of the business concern, Sri Kishan Bang S/o. Sri Vallab is not available is gone out of city. I am well aware of the activities. You have enquired about cell phone activities. In

this regard I am to state that we have purchased cell phones worth Rs.2,93,65,078/- including custom duty during the period of 2003-2004. We are not paid sales tax of sales of same. In this name of Mahesh Co-operative Partnership firm and myself partner doing business of brokerage. There is also other firm by name Mohit and Proprietor is Rajesh Kumar Bang. M/s. Bang Agencies was registered in Hissamgunj Circle and at present registration cancelled. There are certain books of accounts and all other records available at the office which are listed and enclosed to this statement and got filed for further verification.

Regarding tax payment sales of cell phones the turnover are worked out as under:

Total Purchases:- Rs.2,93,65,078/-

Sales Value:- G.P. @ 10% = Rs.3,23,10,586/-

Tax Effect:- Rs.12,92,063/-

Who are paying above tax as under:

1. Rs.46,000/- vide cash receipt No.2878071

Dt.25-05-2004 (Rs.46,000/- only)

2. Rs.12,46,063/- cheque details as below:-

1.Cheque No.686998:-Rs.4,00,000/- dt.06.06.2004.

2.Cheque No.686999:-Rs.4,00,000/- dt.20.06.2004.

3.Cheque No.687900:-Rs.4,46,063/- dt.27.05.2004."

That on 26-05-2004, the petitioner addressed a letter to its banker Tamilnadu Mercantile Bank Limited, Hyderabad, to stop payment of cheques issued by the petitioner on

25-05-2004. The petitioner also addressed a letter to the respondent, *inter alia*, stating that the collection of taxes and obtaining post-dated cheques is in utter violation of the decision rendered by this Court in **Life Line Devices v. Commercial Tax Officer, Narayanguda, Hyderabad & another**. The petitioner further contended that the collection of post-dated cheques without raising the proper demands and without affording an opportunity of being heard and explaining the transactions by the assessee firm is illegal. The petitioner accordingly required the respondent not to present the cheques issued for realisation "as the said cheques have been collected illegally and unauthorisedly.

In spite of my detailed representation, even if the said cheques are presented without my consent for realization, the assessee company will not be responsible if the cheques gets bounced. This intimation is submitted well in advance before the due date of presentation."

That on 29-05-2004 itself, the respondent addressed a letter to the petitioner-firm denying the allegation of the petitioner that the investigating authority has taken the cheques coercively and the details of transactions are not provided to them. The respondent informed the petitioner that the plea taken is only an after thought with an intention to drag on the issue. The petitioner was accordingly put on notice that the cheques shall be presented to the bank for realisation. The petitioner made some further representation, dated 13-07-2004, more or less repeating the same thing what has been noticed hereinabove to which the respondent replied vide his letter dated 14-07-2004 denying the allegation made by the petitioner and also duly informing the petitioner about the detailed statement made by the Manager of its firm. The extract of the statement made by the Manager is also incorporated in the said letter. It is not known what transpired thereafter. The petitioner had chosen to file this writ petition almost

after a period of more than six months of the inspection of the business premises on

25-05-2004 on the day when the petitioner issued certain post-dated cheques towards the payment of sales tax. The prayer in the writ petition is somewhat strange and speaks for itself. The question whether the petitioner committed an offence punishable under Section 138 of the Negotiable Instruments Act read with Section 420 of the Indian Penal Code cannot be gone into in this writ petition filed under Article 226 of the Constitution of India. Whether the petitioner issued the cheques in valid discharge of any debt due to the respondent is a question of fact, which can be gone into only in an appropriate proceedings by a Court of competent jurisdiction.

The learned counsel for the petitioner, however, relied on the decision in **Life Line Devices' case** (1 Supra) in support of the submission that the provisions of the APGST Act do not authorise the Vigilance & Enforcement Officer, on the spot collection of tax by coercion. In our considered opinion, the judgment in no manner supports the case of the petitioner. This Court relying upon its earlier decisions in **Priyanka Wines v. Assistant Commissioner (C.T.) (Intelligence), Abids Division** and **Annan Jewellers, Secunderabad v. Deputy Commercial Tax Officer** observed:

> "Despite the disapproval of the action of the Vigilance and Enforcement officials in language as clear as it could be, the said officials have not learnt to obey the rule of law and the impact of the judgment of this Court has not been felt at all. The illegal and arbitrary action of collecting the post-dated cheques under pressure is persisting. We have to again condemn this action and further warn the concerned officials of the Vigilance and Enforcement Department or the Intelligence Wing that they should forthwith stop collecting the post-dated cheques or money towards the tax—estimated or even admitted to be due and leave it to the competent assessing officer to do this part of the job after giving opportunity to the

> assessee before passing an order in conformity with the provisions of the Andhra Pradesh General Sales Tax Act and the Rules." (Emphasis is of ours).

In **Priyanka Wines case** (2 Supra) this Court observed:

> "If the version of the respondents that the petitioners gave the cheques voluntarily in order to wriggle out of the possible consequences of suppression of turnover inspires confidence, we would have seriously considered whether to interfere in these matters under Article 226 of the Constitution, although the collection of tax is not preceded by the observance of the procedure sanctioned by law. But we have our own doubts in believing the version of the respondents that the cheques were given voluntarily. The fact that the post-dated cheques were collected is suggestive of some pressure tactics exerted on the petitioners." (Emphasis is of ours).

The same view is taken in the decision in **Poorna Wines, Vijayawada v. Commercial Tax Officer, Krishnalanka Circle, Vijayawada & another.**

It is thus clear that the Vigilance & Enforcement Department and the Intelligence Wing is not entitled to collect the post-dated cheques and money towards the tax—estimated or even admitted to be due but the same must be left to the competent assessing officer to do the job after giving opportunity to the assessee before passing an order in conformity with the provisions of the Act and the Rules. But there cannot be any dispute whatsoever that the officials of the Vigilance & Enforcement Department and the Officers of the Intelligence Wing of the Commercial Tax Department in law are authorised to inspect the business premises and record the statements. But that does not mean that any dealer can be coerced to make any statement nor on the spot collections is

permissible, but there is also a possibility that in a particular case a dealer may chose to give the cheques voluntarily in order to wriggle out of the possible consequences of suppression of turnover. Therefore, the allegations levelled by the interested persons about the forcible collection of cheques during the inspection is required to be carefully analyzed by duly taking the surrounding circumstances into consideration.

Now we shall examine the facts on hand and the conduct of the petitioner in order to decide whether the petitioner is entitled to for any relief in this writ petition.

Whether the version of the petitioner inspires any confidence ?

The inspection had taken place on 25-05-2004 during which the Manager of the petitioner's firm made a statement, which we have noticed hereinabove. On 26-05-2004 itself the manager of the petitioner's firm addressed a letter to the respondent in which it is stated that the cheques were issued by succumbing to the threats and coercive tactics adopted by the inspecting officials but it is nowhere stated that the Manager of the petitioner's firm made statement under any threat or coercion. The factum about the Manager of the petitioner's firm making a voluntary statement at the time of inspection is clearly stated in the impugned proceedings, dated 14-07-2004, whereunder an opportunity has been provided to the petitioner to pay the tax amount and two times penalty through the demand draft or challan within three days from the date of receipt of the notice. This proceeding has been issued after the presentation of the cheques and their dishonour. Whether the petitioner disputed the correctness of the contents of the letter is not known.

Yet another aspect of the matter in the affidavit filed in support of the writ petition; the proprietor of the petitioner's firm states that the petitioner is a dealer in Dhal, Edible Oils and Jawari and Sun Flower cake etc., thereby suggesting that in no manner deals with cell phones. This version is not stated by the Manager of the petitioner's firm in his statement recorded on 25-05-2004. It is also not stated in any one of the representations filed by the petitioner-firm before the respondent. These aspects of the matter create any amount of doubt as to the version now presented before us in the affidavit filed in support of the writ petition. The conduct of the petitioner disentitles it for grant of any relief. *Prima facie,* it appears to us that it is not a case of collection of post-dated cheques under any threat or coercion. It is for that reason we are not inclined to interfere and issue any writ as prayed for in exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India.

The question whether the cheques were issued in valid discharge of any debt due and whether the cheques were obtained under any threat or coercion are required to be gone into in a validly constituted proceedings uninfluenced by the observations, if any, made in this order. The petitioner is entitled for its defence if any proceedings initiated against it by the respondent. The observations made in this order are confined only for the purpose of disposal of this writ petition.

The Writ Petition is accordingly dismissed at the stage of admission without any order as to costs.

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B. SUDERSHAN REDDY, J

Date: 10th Dec., 2004

T. Ch. SURYA RAO, J

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To

1) The Commercial Tax Officer

Hissamgunj Circle,

Secunderabad.

2) Two C.Cs. to Special S.C. for Commercial Tax,

High Court of A.P., Hyderabad, (O.U.T.).

3) Two C.D. copies.